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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,776	04/05/2001	John Erik Hershey	RD-24,495	1295
41838	7590	05/31/2006	EXAMINER	
GENERAL ELECTRIC COMPANY (PCPI)			LUGO, DAVID B	
C/O FLETCHER YODER			ART UNIT	
P. O. BOX 692289			PAPER NUMBER	
HOUSTON, TX 77269-2289			2611	

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/825,776

Applicant(s)

HERSHEY ET AL.

Examiner

David B. Lugo

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 1-7.
Claim(s) objected to: _____.
Claim(s) rejected: 8-20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Applicant's arguments are not persuasive. See attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____


JAY K. PATEL
SUPERVISORY PATENT EXAMINER

ADVISORY ACTION

Response to Arguments

Applicant's arguments filed 5/11/06 have been fully considered but they are not persuasive. Regarding claims 8-11, 14-16 and 19, Applicant argues that the claimed limitation of a "transmitter configured to transmit a colored noise-like preamble" as recited in claims 8 and 14, has been incorrectly interpreted. Applicant states that the Examiner has interpreted the term "transmitter" in a manner inconsistent with the specification. The Examiner respectfully disagrees. The interpretation taken by the Examiner is considered to be entirely consistent with the specification, as the claimed "transmitter" is considered to correlate with the block actually labeled as "TRANSMITTER 170" in Figure 1 of the instant application.

Applicant further argues that the configured "transmitter" as claimed refers to the ISM transmission unit (i.e. unit 100 of Figure 1), which includes a wideband noise source, a colored noise-like preamble signal generator and a modulator, which generate the colored noise-like preamble, which is then transmitted by the transmitter and antenna, and not a passive unit such as a "transmitter." It is noted that although Applicant's more narrow interpretation may be valid, the one taken by the Examiner is also considered to be valid, and within the broadest reasonable interpretation of the claims consistent with the specification allowed during examination in accordance with the MPEP 904.01. The interpretation taken in the final Office action is that the transmitter of Scott is configured to transmit a colored noise-like preamble and is capable of doing so, as the configuration of the transmitter of Scott will not change even if the data supplied to the transmitter changes, as it will merely modulate the data supplied to it and provide the modulated data to the antenna for propagation through the communication medium, just as the

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configuration of transmitter 170 of Figure 1 of the instant application does not change regardless of whether it transmits colored noise-like preamble data supplied from ISM colored noise-like preamble signal generator 120 via modulator 130, or ISM data supplied from ISM spread spectrum modulator 160 (instant application: page 4, lines 16-18 and 20-22).

Further, in response to Applicant's argument that the claimed configured "transmitter" includes a wideband noise source, a colored noise-like preamble signal generator and a modulator, which generate the colored noise-like preamble, which is then transmitted by the transmitter and antenna, it is noted that those limitations are not expressly listed as part of the claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). If the claimed transmitter were recited as including those components, then there would be no ambiguity as to what the transmitter is defining. Accordingly, the rejection of the claims is maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David B. Lugo whose telephone number is 571-272-3043. The examiner can normally be reached on M-F; 9:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on 571-272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David Lugo
5/25/06



JAY K. PATEL
SUPERVISOR PATENT EXAMINER